

BEFORE THE  
BOARD OF REGISTERED NURSING  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Statement of Issues Against:

**MADONNA ROSE BAUTISTA MALINIS**  
824 Humphrey Place  
Chula Vista, CA 91911

Case No. 2011-609

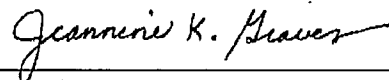
Respondent

**DECISION AND ORDER**

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on **May 16, 2011**.

IT IS SO ORDERED **April 14, 2011**.



\_\_\_\_\_  
President  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California

1 KAMALA D. HARRIS  
Attorney General of California  
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8  
9 **BEFORE THE**  
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10 **DEPARTMENT OF CONSUMER AFFAIRS**  
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11 In the Matter of the Statement of Issues Against:

Case No. 2011-609

12 **MADONNA ROSE BAUTISTA MALINIS**  
13 **824 Humphrey Place**  
14 **Chula Vista, CA 91911**

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

15 Respondent.

16 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
17 entitled proceedings that the following matters are true:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) is the Executive Officer of the Board of  
20 Registered Nursing. She brought this action solely in her official capacity and is represented in  
21 this matter by Kamala D. Harris, Attorney General of the State of California, by Amanda Dodds,  
22 Senior Legal Analyst.

23 2. Respondent Madonna Rose Bautista Malinis (Respondent) is representing herself in  
24 this proceeding and has chosen not to exercise her right to be represented by counsel.

25 3. On or about March 25, 2010, Respondent filed an application dated March 7, 2010,  
26 with the Board of Registered Nursing to obtain a Registered Nurse License.

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**JURISDICTION**

4. Statement of Issues No. 2011-609 was filed before the Board of Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against Respondent. The Statement of Issues and all other statutorily required documents were properly served on Respondent on January 14, 2011. A copy of Statement of Issues No. 2011-609 is attached as Exhibit A and incorporated herein by reference.

**ADVISEMENT AND WAIVERS**

5. Respondent has carefully read, and understands the charges and allegations in Statement of Issues No. 2011-609. Respondent has also carefully read, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Statement of Issues; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

**CULPABILITY**

8. Respondent admits the truth of each and every charge and allegation in Statement of Issues No. 2011-609.

9. Respondent agrees that her application for a Registered Nurse License is subject to denial and she agrees to be bound by the Board of Registered Nursing (Board)'s probationary terms as set forth in the Disciplinary Order below.

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**CONTINGENCY**

10. This stipulation shall be subject to approval by the Board of Registered Nursing.

Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Respondent Madonna Rose Bautista Malinis, upon her successful completion of the licensure examination and all other licensing requirements, will be issued a registered nurse license. Said license shall immediately be revoked, the order of

1 revocation stayed and Respondent placed on probation for a period of two (2) years on the  
2 following conditions:

3 **Severability Clause.** Each condition of probation contained herein is a separate and  
4 distinct condition. If any condition of this Order, or any application thereof, is declared  
5 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other  
6 applications thereof, shall not be affected. Each condition of this Order shall separately be valid  
7 and enforceable to the fullest extent permitted by law.

8 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A  
9 full and detailed account of any and all violations of law shall be reported by Respondent to the  
10 Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of  
11 compliance with this condition, Respondent shall submit completed fingerprint forms and  
12 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted  
13 as part of the licensure application process.

14 **Criminal Court Orders:** If Respondent is under criminal court orders, including  
15 probation or parole, and the order is violated, this shall be deemed a violation of these probation  
16 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

17 2. **Comply with the Board's Probation Program.** Respondent shall fully  
18 comply with the conditions of the Probation Program established by the Board and cooperate with  
19 representatives of the Board in its monitoring and investigation of the Respondent's compliance  
20 with the Board's Probation Program. Respondent shall inform the Board in writing within no  
21 more than 15 days of any address change and shall at all times maintain an active, current license  
22 status with the Board, including during any period of suspension.

23 Upon successful completion of probation, Respondent's license shall be fully restored.

24 3. **Report in Person.** Respondent, during the period of probation, shall  
25 appear in person at interviews/meetings as directed by the Board or its designated representatives.

26 4. **Residency, Practice, or Licensure Outside of State.** Periods of residency  
27 or practice as a registered nurse outside of California shall not apply toward a reduction of this  
28 probation time period. Respondent's probation is tolled, if and when she resides outside of

1 California. Respondent must provide written notice to the Board within 15 days of any change of  
2 residency or practice outside the state, and within 30 days prior to re-establishing residency or  
3 returning to practice in this state.

4 Respondent shall provide a list of all states and territories where she has ever been licensed  
5 as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide  
6 information regarding the status of each license and any changes in such license status during the  
7 term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing  
8 license during the term of probation.

9           **5. Submit Written Reports.** Respondent, during the period of probation,  
10 shall submit or cause to be submitted such written reports/declarations and verification of actions  
11 under penalty of perjury, as required by the Board. These reports/declarations shall contain  
12 statements relative to Respondent's compliance with all the conditions of the Board's Probation  
13 Program. Respondent shall immediately execute all release of information forms as may be  
14 required by the Board or its representatives.

15 Respondent shall provide a copy of this Decision to the nursing regulatory agency in every  
16 state and territory in which she has a registered nurse license.

17           **6. Function as a Registered Nurse.** Respondent, during the period of  
18 probation, shall engage in the practice of registered nursing in California for a minimum of 24  
19 hours per week for 6 consecutive months or as determined by the Board.

20 For purposes of compliance with the section, "engage in the practice of registered nursing"  
21 may include, when approved by the Board, volunteer work as a registered nurse, or work in any  
22 non-direct patient care position that requires licensure as a registered nurse.

23 The Board may require that advanced practice nurses engage in advanced practice nursing  
24 for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

25 ~~If Respondent has not complied with this condition during the probationary term, and~~  
26 Respondent has presented sufficient documentation of her good faith efforts to comply with this  
27 condition, and if no other conditions have been violated, the Board, in its discretion, may grant an  
28 extension of Respondent's probation period up to one year without further hearing in order to

1 comply with this condition. During the one year extension, all original conditions of probation  
2 shall apply.

3 **7. Employment Approval and Reporting Requirements.** Respondent shall  
4 obtain prior approval from the Board before commencing or continuing any employment, paid or  
5 voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all  
6 performance evaluations and other employment related reports as a registered nurse upon request  
7 of the Board.

8 Respondent shall provide a copy of this Decision to her employer and immediate  
9 supervisors prior to commencement of any nursing or other health care related employment.

10 In addition to the above, Respondent shall notify the Board in writing within seventy-two  
11 (72) hours after she obtains any nursing or other health care related employment. Respondent  
12 shall notify the Board in writing within seventy-two (72) hours after she is terminated or  
13 separated, regardless of cause, from any nursing, or other health care related employment with a  
14 full explanation of the circumstances surrounding the termination or separation.

15 **8. Supervision.** Respondent shall obtain prior approval from the Board  
16 regarding Respondent's level of supervision and/or collaboration before commencing or  
17 continuing any employment as a registered nurse, or education and training that includes patient  
18 care.

19 Respondent shall practice only under the direct supervision of a registered nurse in good  
20 standing (no current discipline) with the Board of Registered Nursing, unless alternative methods  
21 of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are  
22 approved.

23 Respondent's level of supervision and/or collaboration may include, but is not limited to the  
24 following:

25 (a) ~~Maximum - The individual providing supervision and/or collaboration is present in~~  
26 the patient care area or in any other work setting at all times.

27 (b) Moderate - The individual providing supervision and/or collaboration is in the patient  
28 care unit or in any other work setting at least half the hours Respondent works.

1 (c) Minimum - The individual providing supervision and/or collaboration has person-to-  
2 person communication with Respondent at least twice during each shift worked.

3 (d) Home Health Care -If Respondent is approved to work in the home health care  
4 setting, the individual providing supervision and/or collaboration shall have person-to-person  
5 communication with Respondent as required by the Board each work day. Respondent shall  
6 maintain telephone or other telecommunication contact with the individual providing supervision  
7 and/or collaboration as required by the Board during each work day. The individual providing  
8 supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to  
9 patients' homes visited by Respondent with or without Respondent present.

10 9. **Employment Limitations.** Respondent shall not work for a nurse's  
11 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a  
12 traveling nurse, or for an in-house nursing pool.

13 Respondent shall not work for a licensed home health agency as a visiting nurse unless the  
14 registered nursing supervision and other protections for home visits have been approved by the  
15 Board. Respondent shall not work in any other registered nursing occupation where home visits  
16 are required.

17 Respondent shall not work in any health care setting as a supervisor of registered nurses.  
18 The Board may additionally restrict Respondent from supervising licensed vocational nurses  
19 and/or unlicensed assistive personnel on a case-by-case basis.

20 Respondent shall not work as a faculty member in an approved school of nursing or as an  
21 instructor in a Board approved continuing education program.

22 Respondent shall work only on a regularly assigned, identified and predetermined  
23 worksite(s) and shall not work in a float capacity.

24 If Respondent is working or intends to work in excess of 40 hours per week, the Board may  
25 request documentation to determine whether there should be restrictions on the hours of work.

26 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall  
27 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later  
28 than six months prior to the end of her probationary term.



Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

**11. Violation of Probation.** If Respondent violates the conditions of her probation, the Board after giving Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

**12. License Surrender.** During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

(1) Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

(2) One year for a license surrendered for a mental or physical illness.

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1                                13.     **Physical Examination.** Within 45 days of the effective date of this  
2 Decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or  
3 physician assistant, who is approved by the Board before the assessment is performed, submit an  
4 assessment of the Respondent's physical condition and capability to perform the duties of a  
5 registered nurse, including a determination as set forth below in Condition 15, "Rule-Out  
6 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to  
7 the Board. If medically determined, a recommended treatment program will be instituted and  
8 followed by the Respondent with the physician, nurse practitioner, or physician assistant  
9 providing written reports to the Board on forms provided by the Board.

10                If Respondent is determined to be unable to practice safely as a registered nurse, the  
11 licensed physician, nurse practitioner, or physician assistant making this determination shall  
12 immediately notify the Board and Respondent by telephone, and the Board shall request that the  
13 Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall  
14 immediately cease practice and shall not resume practice until notified by the Board. During this  
15 period of suspension, Respondent shall not engage in any practice for which a license issued by  
16 the Board is required until the Board has notified Respondent that a medical determination  
17 permits Respondent to resume practice. This period of suspension will not apply to the reduction  
18 of this probationary time period.

19                If Respondent fails to have the above assessment submitted to the Board within the 45-day  
20 requirement, Respondent shall immediately cease practice and shall not resume practice until  
21 notified by the Board. This period of suspension will not apply to the reduction of this  
22 probationary time period. The Board may waive or postpone this suspension only if significant,  
23 documented evidence of mitigation is provided. Such evidence must establish good faith efforts  
24 by Respondent to obtain the assessment, and a specific date for compliance must be provided.  
25 Only one such waiver or extension may be permitted.

26                                14.     **Mental Health Examination.** Respondent shall, within 45 days of the  
27 effective date of this Decision, have a mental health examination including psychological testing  
28 as appropriate to determine his capability to perform the duties of a registered nurse, including a

determination as set forth below in Condition 15, "Rule-Out Substance Abuse Assessment."

The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Respondent that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

**15. Rule-Out Substance Abuse Assessment.** If the examiner conducting the physical and/or mental health examination determines that Respondent is dependent upon drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then Respondent must further comply with the following additional terms and conditions of probation.

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**(A) Participate in Treatment/Rehabilitation Program for Chemical Dependence.**

Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider respondent in violation of probation.

Based on Board recommendation, each week respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

**(B) Abstain From Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall

completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for respondent for dangerous drugs, controlled

1 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician  
2 assistant shall report to the Board on a quarterly basis respondent's compliance with this  
3 condition. If any substances considered addictive have been prescribed, the report shall identify a  
4 program for the time limited use of any such substances.

5 The Board may require the single coordinating physician, nurse practitioner, or  
6 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in  
7 addictive medicine.

8 (C) **Submit to Tests and Samples.** Respondent, at her expense, shall participate in a  
9 random, biological fluid testing or a drug screening program which the Board approves. The  
10 length of time and frequency will be subject to approval by the Board. The respondent is  
11 responsible for keeping the Board informed of respondent's current telephone number at all  
12 times. Respondent shall also ensure that messages may be left at the telephone number when she  
13 is not available and ensure that reports are submitted directly by the testing agency to the Board,  
14 as directed. Any confirmed positive finding shall be reported immediately to the Board by the  
15 program and the respondent shall be considered in violation of probation.

16 In addition, respondent, at any time during the period of probation, shall fully  
17 cooperate with the Board or any of its representatives, and shall, when requested, submit to such  
18 tests and samples as the Board or its representatives may require for the detection of alcohol,  
19 narcotics, hypnotics, dangerous drugs, or other controlled substances.

20 If respondent has a positive drug screen for any substance not legally authorized and  
21 not reported to the coordinating physician, nurse practitioner, or physician assistant, and the  
22 Board files a petition to revoke probation or an accusation, the Board may suspend respondent  
23 from practice pending the final decision on the petition to revoke probation or the accusation.  
24 This period of suspension will not apply to the reduction of this probationary time period.

25 ~~If respondent fails to participate in a random, biological fluid testing or drug~~  
26 screening program within the specified time frame, the respondent shall immediately cease  
27 practice and shall not resume practice until notified by the Board. After taking into account  
28 documented evidence of mitigation, if the Board files a petition to revoke probation or an

1 accusation, the Board may suspend respondent from practice pending the final decision on the  
2 petition to revoke probation or the accusation. This period of suspension will not apply to the  
3 reduction of this probationary time period.

4 (D) **Therapy or Counseling Program.** Respondent, at her expense, shall  
5 participate in an on-going counseling program until such time as the Board releases her from this  
6 requirement and only upon the recommendation of the counselor. Written progress reports from  
7 the counselor will be required at various intervals.

8 **ACCEPTANCE**

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the  
10 stipulation and the effect it will have on my Registered Nurse License. I enter into this Stipulated  
11 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
12 bound by the Decision and Order of the Board of Registered Nursing.

13  
14 DATED: 17 Feb 2011

MADONNA B. MALINIS  
MADONNA ROSE BAUTISTA MALINIS  
Respondent

16  
17 **ENDORSEMENT**

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Board of Registered Nursing of the Department of Consumer  
20 Affairs.

21 Dated: 3/2/2011

22 Respectfully submitted,

23 KAMALA D. HARRIS  
Attorney General of California  
24 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General

25 Amanda Dodds  
26 AMANDA DODDS  
27 Senior Legal Analyst  
Attorneys for Complainant

28 SD2010702741

## **Exhibit A**

**Statement of Issues No. 2011-609**

1 KAMALA D. HARRIS  
Attorney General of California  
2 LINDA K. SCHNEIDER  
Supervising Deputy Attorney General  
3 State Bar No. 101336  
AMANDA DODDS  
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7 Facsimile: (619) 645-2061  
*Attorneys for Complainant*

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**STATE OF CALIFORNIA**

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12 Against:

Case No. 2011-609

13 **MADONNA ROSE BAUTISTA MALINIS**  
14 **824 Humphrey Place**  
**Chula Vista, CA 91911**

**STATEMENT OF ISSUES**

15 Respondent.

16  
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Statement of Issues solely in  
20 her official capacity as the Executive Officer of the Board of Registered Nursing, Department of  
21 Consumer Affairs.

22 2. On or about March 25, 2010, the Board of Registered Nursing, Department of  
23 Consumer Affairs received an application for a Registered Nurse License from Madonna Rose  
24 Bautista Malinis (Respondent). On or about March 7, 2010, Madonna Rose Bautista Malinis  
25 certified under penalty of perjury to the truthfulness of all statements, answers, and  
26 representations in the application. On July 7, 2010, Madonna Rose Bautista Malinis suffered a  
27 criminal conviction for driving under the influence of alcohol. The Board denied the application  
28 on August 17, 2010.



## JURISDICTION

3. This Statement of Issues is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2736 of the Code provides, in pertinent part, that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under section 480 of that Code.

## STATUTORY PROVISIONS

5. Section 475 of the Code states:

(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

(1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.

(2) Conviction of a crime.

(3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.

(4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

(b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).

(c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

6. Section 480 of the Code states:

(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

1 (3) (A) Done any act that if done by a licentiate of the business or profession  
2 in question, would be grounds for suspension or revocation of license.

3 (B) The board may deny a license pursuant to this subdivision only if the  
4 crime or act is substantially related to the qualifications, functions, or duties of the  
5 business or profession for which application is made.

6 ....

7 7. Section 482 of the Code states:

8 Each board under the provisions of this code shall develop criteria to evaluate  
9 the rehabilitation of a person when:

10 (a) Considering the denial of a license by the board under Section 480; or

11 (b) Considering suspension or revocation of a license under Section 490.

12 Each board shall take into account all competent evidence of rehabilitation  
13 furnished by the applicant or licensee.

14 8. Section 2761 of the Code states:

15 The board may take disciplinary action against a certified or licensed nurse or  
16 deny an application for a certificate or license for any of the following:

17 (a) Unprofessional conduct, which includes, but is not limited to, the  
18 following:

19 ....

20 (f) Conviction of a felony or of any offense substantially related to the  
21 qualifications, functions, and duties of a registered nurse, in which event the record of  
22 the conviction shall be conclusive evidence thereof.

23 ....

24 9. Section 2762 of the Code states:

25 In addition to other acts constituting unprofessional conduct within the meaning  
26 of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person  
27 licensed under this chapter to do any of the following:

28 ....

(b) Use any controlled substance as defined in Division 10 (commencing with  
Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous  
device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner  
dangerous or injurious to himself or herself, any other person, or the public or to the  
extent that such use impairs his or her ability to conduct with safety to the public the  
practice authorized by his or her license.

///

1 (c) Be convicted of a criminal offense involving the prescription, consumption,  
2 or self-administration of any of the substances described in subdivisions (a) and (b) of  
3 this section, or the possession of, or falsification of a record pertaining to, the  
4 substances described in subdivision (a) of this section, in which event the record of  
5 the conviction is conclusive evidence thereof.

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REGULATORY PROVISIONS

10. California Code of Regulations, title 16, section 1444 states:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare. Such convictions or acts shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

11. California Code of Regulations, title 16, section 1445 states:

(a) When considering the denial of a license under Section 480 of the code, the board, in evaluating the rehabilitation of the applicant and his/her present eligibility for a license will consider the following criteria:

(1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the code.

(3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).

(4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.

(5) Evidence, if any, of rehabilitation submitted by the applicant.

1 **FIRST CAUSE FOR DENIAL OF APPLICATION**

2 **(July 7, 2010 Criminal Conviction for DUI on April 10, 2010)**

3 12. Respondent's application is subject to denial under sections 480, subdivision (a)(1)  
4 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is substantially  
5 related to the qualifications, duties, and functions of a registered nurse. The circumstances are as  
6 follows:

7 a. On or about July 7, 2010, in a criminal proceeding entitled *People of the*  
8 *State of California v. Madonna R. Malinis*, in San Diego County Superior Court, case number  
9 M107830, Respondent was convicted on her plea of guilty to violating Vehicle Code section  
10 23152, subdivision (b), driving with a blood alcohol concentration of .08 percent or higher, a  
11 misdemeanor. An additional count of driving under the influence of alcohol (Veh. Code, §  
12 23152, subd. (a)) was dismissed pursuant to a plea agreement.

13 b. As a result of the conviction, on or about July 7, 2010, Respondent was  
14 sentenced to five years summary probation, and ordered to complete a three-month First  
15 Conviction Program and a MADD victim impact seminar, comply with standard alcohol  
16 conditions, and pay fines, fees, and restitution in the amount of \$1,952.

17 c. The facts that led to the conviction were that on or about the early morning of  
18 April 10, 2010, a patrol officer with the San Diego Police Department stopped Respondent after  
19 she was observed driving into oncoming traffic in downtown San Diego. The officer activated  
20 his lights and siren and Respondent yielded after two blocks. Respondent had four passengers in  
21 the vehicle. The officer noted an odor of an alcoholic beverage on Respondent's breath, her  
22 speech was slurred, and her eyes were bloodshot, watery and exhibited signs of nystagmus.  
23 Respondent admitted she had been drinking. Respondent agreed to submit to field sobriety tests  
24 but could not complete them as instructed and demonstrated by the officer. Respondent agreed to  
25 a preliminary alcohol screening (PAS) test, which registered readings of .158 and .145 percent  
26 blood alcohol concentration (BAC). Respondent was arrested for driving under the influence of  
27 alcohol. She provided two additional samples into an Intoxilyzer which registered readings of .13  
28 and .14 percent BAC.

1 **SECOND CAUSE FOR DENIAL OF APPLICATION**

2 **(Unprofessional Conduct - Dangerous Use of Alcohol)**

3 13. Respondent's application is subject to denial under sections 480, subdivision  
4 (a)(3)(A), and 2762, subdivision (b) of the Code in that on or about April 10, 2010, Respondent  
5 used alcoholic beverages to an extent or in a manner dangerous or injurious to herself, her  
6 passengers, and the public when she operated a motor vehicle while intoxicated, as detailed in  
7 paragraph 12, above.

8 **THIRD CAUSE FOR DENIAL OF APPLICATION**

9 **(Unprofessional Conduct - Conviction of an Alcohol-Related Offense)**

10 14. Respondent's application is subject to denial under sections 480, subdivision  
11 (a)(3)(A), and 2762, subdivision (c) of the Code in that on or about July 7, 2010, Respondent was  
12 convicted of a criminal offense involving the consumption of alcohol as detailed in paragraph 12,  
13 above.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,  
16 and that following the hearing, the Board of Registered Nursing issue a decision:

17 1. Denying the application of Madonna Rose Bautista Malinis for a Registered Nurse  
18 License;

19 2. Taking such other and further action as deemed necessary and proper.

20 DATED: 1-11-2011

21 *Louise R. Bailey*  
22 LOUISE R. BAILEY, M.ED., RN  
23 Executive Officer  
24 Board of Registered Nursing  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant  
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